



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,679	12/19/2000	J. Stuart Cumming	P02087US1	6074

34313 7590 06/21/2005

ORRICK, HERRINGTON & SUTCLIFFE, LLP  
IP PROSECUTION DEPARTMENT  
4 PARK PLAZA  
SUITE 1600  
IRVINE, CA 92614-2558

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

09/740,679

Examiner

Eduardo C. Robert

Applicant(s)

CUMMING, J. STUART

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 3/31/05 & 5/27/05 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
  - ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
  - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
  - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 4. Amendments to the claims:
  - ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: See Continuation Sheet.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

## Continuation of 4(e) Other:

Applicant filed an amendment after final on 1/24/05 which was NOT ENTERED (see advisory action mailed on 2/18/05). On 3/31/05 applicant filed an RCE with an amendment to the claims. That amendment to the claims is non-compliant with 37 CFR 1.121 because the text of all claims being amended must be presented with markings to show changes relative to immediate prior versions, i.e. version of claims filed on 8/13/04 since the set of claims filed on 1/24/05 was not entered. In the claims filed on 3/31/05, it appears that the changes are being made to the claims filed on 1/24/05 and not to the one of 8/13/04, wherein at least claim 1 is not showing what was deleted or inserted and the status identifier is incorrect since clearly claim 1 of 8/13/04 and 3/31/05 are not the same. All the other claims should be checked for similar problems. Furthermore, the amendment filed on 5/27/05, includes problems similar to the one of the 3/31/05. For example the claims of 5/27/05 should be amending the claims of 3/31/05 however, they present problems such as the one of claim 105, wherein the claim is being amended but the status identifier is incorrect.

Please, check that the amendments to the claims is done properly and that the changes are done to the prior immediate version of claims. The following is a list of all the versions of claims:

8/13/04 claims before final

8/24/05 claims after final and NOT ENTERED!

3/31/05 claims filed with RCE (the prior version for these claims is the one of 8/13/04)

5/27/05 last set of claims (the prior version for these claims is the one of 3/31/05)

Both amendments filed on 8/31/05 and 5/27/05 are non-compliant to 37 CFR 1.121 for the reasons set forth above.

Applicant is advised to use the claim set of 8/13/04 and make any amendments to that set.